



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2060

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117459.

The Texas Department of Health (the "department") received an open records request for the "reports of contact, deficiencies, and complaints" pertaining to certain investigations conducted by the department. You state that some of the requested information has been released to the requestor. You seek to withhold other information in the documents at issue pursuant to section 552.101 of the Government Code.¹

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public pursuant to common-law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Some of the information at issue reveals the identity of patients with emotional disorders and as such must be withheld from the public to protect those individuals' privacy interests. *See* Open Records Decision Nos. 343 (1982), 262 (1980). Other information contained in these records contains medical

¹As you note in your brief to this office, however, all de-identified HCFA-2567 forms must be released to the requestor pursuant to federal law. *See* 42 C.F.R. §§ 401.126, .133.

information that we believe may implicate the privacy interests of other patients. We have marked the information that must be withheld on privacy grounds.²

As noted above section 552.101 also excepts from required public disclosure information made confidential by statutory law. Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, makes confidential “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” *See also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Some of the documents at issue either consist of patients’ mental health records or contain information that appears to have been obtained from mental health records and patient-professional communications. Neither may be released except in accordance with sections 611.004 and 611.0045. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045. We have marked in brackets the information that must be withheld pursuant to section 611.002 of the Health and Safety Code.

Some of the requested records contain medical information that is made confidential by statutory law. Section 5.08 of article 4495b of Vernon’s Texas Civil Statutes, the Medical Practice Act (the “MPA”), makes confidential “[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient” and “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” The records at issue contain information, including medical file numbers, that appears to have been directly obtained from medical records and communications and such information may be disclosed only in accordance with the MPA. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked in brackets the information that may be released only in accordance with the MPA.³

You also contend that section 161.032 of the Health and Safety Code makes confidential some of the information at issue. Section 161.032 provides:

²Please note, however, that not all medical information about an individual implicates that person’s privacy interests; a case-by-case analysis is required. Open Records Decision No. 370 (1983). We also note that because the right of privacy extinguishes after death, Attorney General Opinions JM-229 (1984); H-917 (1976), the department should not withhold any information about a deceased individual on privacy grounds.

³We note that in this instance other medical information contained in the records at issue was obtained by the department from sources other than medical records, such as interviews with the complainant or medical staff, and as such is not governed by the MPA.

- (a) The records and proceedings of *a medical committee* are confidential and are not subject to court subpoena.
- (b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.
- (c) This section and Section 5.06, Medical Practices Act . . . do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, or extended care facility. [Emphasis added.]

Section 161.031 of the Health and Safety Code defines “medical committee” to include “any committee, including a joint committee,” of a hospital or an extended care facility. We agree that the minutes of meetings conducted by hospital staff must be withheld from the public pursuant to section 161.032(a) of the Health and Safety Code. We also agree that other information revealing the proceedings of a medical committee must be withheld from the public pursuant to this provision. We have marked the information that the department must withhold pursuant to section 161.032(a).

You also raise section 48.101 of the Human Resources Code, which pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

- (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:
 - (1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];
 - (2) the identity of the person making the report; and
 - (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.
- (b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.


We agree that the submitted information you have marked is confidential under section 48.101(a) of the Human Resources Code and must be withheld. *See* Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). These records must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

You also state that one "Report of Contact" submitted to this office contains information that is similar to information contained in the abuse and neglect reports, but was not used or created for purposes of a chapter 48 investigation. Rather, this particular report was created solely for the purpose of documenting the Medicare investigation performed by the department pursuant to federal law. We therefore conclude that this report is not made confidential under section 48.101. We have, however, marked the information in this document that must be withheld under common law privacy or other statutory law.

Finally, you seek to withhold certain social security numbers under section 552.101. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. (1994) 622. These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You inform us that the social security numbers are collected pursuant to laws enacted after October 1, 1990. We conclude that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/mjc

Ref.: ID# 117459

Enclosures: Marked documents

cc: Mr. Chris Salm
Seiu Organizing
1630 S. Commerce St.
Las Vegas, Nevada 89102
(w/o enclosures)